

## Unanimous-consent Agreements

- § 1. In General; Effect of Agreement
- § 2. Recognition of Members for Requests
- § 3. Timeliness
- § 4. Stating the Request; Withdrawal
- § 5. Objecting to the Request
- § 6. Reserving Objections
- § 7. Scope of Request; Particular Uses or Applications
- § 8. — Application to Debate
- § 9. Limitations on Requests; Grounds for Denial
- § 10. Reconsideration; Modification or Revocation of Agreement

### Research References

- 4 Hinds §§ 3058–3060, 3155–3159
- 7 Cannon §§ 758–763
- 7 Deschler Ch 23 §§ 42–48
- Manual §§ 528, 757, 854, 870, 872, 877a, 881

### § 1. In General; Effect of Agreement

#### Generally

A request for unanimous consent is in effect a motion (8 Cannon § 2794) to suspend the order of business temporarily (4 Hinds § 3058) so as to permit some action which is not in dispute and to which no Member has any objection. An objection by any Member terminates the request. Deschler Ch 23 § 45.6.

The practice of the House in allowing some action to be taken by unanimous consent began in the 1830's, when the House, responding to the increased pressure of legislative activity, unanimously agreed to a special order permitting it to consider a bill which was not in the regular order of business. 4 Hinds § 3155. This use has now become commonplace. In the modern practice in the House, many items of business are considered as a result of unanimous-consent requests. The device is also used to facilitate passage—to expedite the reading of a bill, to control or extend the time for debate, or to take a recess. §§ 7, 8, *infra*. See also CONSIDERATION AND DEBATE.

**Availability in the Committee of the Whole**

Unanimous-consent requests are in order both in the House and the Committee of the Whole. Thus, unless in conflict with a House order or special rule, the committee may by unanimous consent permit the withdrawal of an amendment (Rule XXIII clause 5), limit general debate (8 Canon § 2553) or provide that a bill shall be considered as having been read and open to amendment (*Manual* § 872). However, unanimous consent may not be requested in the Committee of the Whole on matters properly cognizable only in the House. *Manual* § 877a; Deschler Ch 23 §§ 48.15, 48.16.

**§ 2. Recognition of Members for Requests****Generally**

The recognition of Members to offer unanimous-consent requests is at the discretion of the Chair. Deschler Ch 23 § 45.4. A Member seeking unanimous consent for some purpose must be recognized by the Chair for that specific purpose and a Member so recognized may not seek the further consent of the House for some other purpose. Thus, a Member may not be recognized to consider a particular bill where he has been recognized only to proceed for one minute. Deschler Ch 23 § 48.3.

The Speaker may decline recognition where the Member making the request has failed to comply with the Speaker's policy that he and the majority leaders be notified in advance of the intention to submit unanimous-consent requests for changes in the order of business. 6 Canon § 708; Deschler Ch 23 § 44.1. In recent years, the Speaker has consistently declined to recognize Members to seek consideration of unreported bills by unanimous consent unless assured that the majority and minority floor and committee leaderships have no objection. *Manual* § 757; 98-2, Jan. 25, 1984, p 354; 102-1, Jan. 3, 1991, p \_\_\_\_; 103-1, Jan. 5, 1993, p \_\_\_\_\_. In the 103d Congress this policy was extended to reported bills (103-1, July 23, 1993, p \_\_\_\_\_) and in the 102d Congress to the consideration of nongermane amendments to bills (102-1, Nov. 14, 1991, p \_\_\_\_). The Speaker's authority to decline to recognize individual Members to request unanimous consent for the consideration of bills derives from clause 2 of Rule XIV, which confers the general power of recognition on the Speaker. 98-2, Jan. 26, 1984, p 449. The Speaker has often enunciated his policies with respect to recognition for unanimous-consent requests. Deschler Ch 23 § 44.2. 98-2, Apr. 26, 1984, p 10194.

### § 3. Timeliness

Unanimous-consent requests must be timely (Deschler Ch 23 §45.4); they cannot be entertained:

- In the House after the House has voted to go into the Committee of the Whole. 4 Hinds § 4727.
- When the absence of a quorum has been announced in the House. 6 Cannon §§ 660, 686, 689.
- During proceedings incident to securing a quorum of the Committee of the Whole. 8 Cannon § 2379.
- During consideration of a previous unanimous-consent request by another Member. Deschler Ch 23 §48.1.

An objection to a unanimous-consent request must be timely made. Thus, when unanimous consent has been given for the consideration of a bill, amendments may be offered and may not be prevented by a subsequent objection of a Member. 5 Hinds §5782. It is ordinarily too late to object to a unanimous-consent request after the Chair has asked if there is objection and has announced that he hears none. Deschler Ch 23 §45.3.

### § 4. Stating the Request; Withdrawal

A Member seeking the unanimous consent of the House on some matter should rise and address the Chair. If he has more than one request, they should be put one at a time. Requests may not be coupled or put in the alternative. 6 Cannon § 709; Deschler Ch 23 §43.2. And one unanimous-consent request should not be made contingent upon another. 6 Cannon § 709.

It is the Speaker's statement of the request as put to the House that is controlling; and he may recognize only such objections as are heard *after* he has put the request to the House. Deschler Ch 23 §43.1.

A Member may withdraw his unanimous-consent request at any time before House action thereon, and unanimous consent to do so is not required. Deschler Ch 23 §43.4.

### § 5. Objecting to the Request

#### Generally

An objection to a unanimous-consent request terminates the request, even if the objection is subsequently withdrawn. Deschler Ch 23 §45.6. And since a request for unanimous consent is in effect a request to suspend the order of business temporarily, a demand for the "regular order" may be

made at any time while the request is being stated and is equivalent to an objection. 4 Hinds § 3058.

An objection to a unanimous-consent request may be made by any Member (Deschler Ch 23 § 42), including the Speaker (8 Cannon § 3383) or the Chairman of the Committee of the Whole (Deschler Ch 23 § 45.5). A Delegate can also object. 6 Cannon § 241; 98–2, June 29, 1984, p 20267.

When objecting to a unanimous-consent request, a Member must rise from his seat (2 Hinds § 1137; 102–2, June 23, 1992, p \_\_\_\_ ) and be identified for the Record (98–2, Oct. 4, 1984, p 30042). The objection is properly made to the request as put by the Chair, not as put by the Member making the request. Deschler Ch 23 § 45.

### **§ 6. Reserving Objections**

A Member may reserve the right to object to a unanimous-consent request and by so doing obtains the floor. Deschler Ch 23 § 42. However, recognition for this purpose is within the discretion of the Speaker, and he may refuse to permit debate under the reservation and put the question on the request. Deschler Ch 23 §§ 46.1, 46.2.

A Member reserving the right to object to a unanimous-consent request holds the floor under that reservation subject to a demand for the regular order by any Member or by the Chair. 103–1, Feb. 17, 1993, p \_\_\_\_ . A Member controlling the floor under a reservation of the right to object looses the floor if the request is withdrawn (Deschler Ch 23 § 46.4) or if the regular order is demanded (6 Cannon §§ 287, 288; Deschler Ch 23 § 46.3). If the regular order is demanded, the reserving Member must either object or withdraw his reservation. Deschler Ch 23 § 46.6; 103–1, Feb. 17, 1993, p \_\_\_\_ .

### **§ 7. Scope of Request; Particular Uses or Applications**

The unanimous-consent procedure is commonly used to change the regular order or waive the application of a particular rule. Under this practice, the House may by unanimous consent waive the requirement of a rule unless the rule in question specifies that it is not subject to waiver, even by unanimous consent. 91–2, July 29, 1970, p 24619. The unanimous-consent procedure is applied across a wide range of House business. It may be used:

- To swear in a Member-elect pending arrival of his credentials. 6 Cannon § 12.
- To take up a matter for consideration in the House as in Committee of the Whole. 4 Hinds § 4923.

- To increase the number of Members on a standing committee. 8 Cannon § 3381.
- To refer a bill for the payment of a private claim against the government. See Rule XXI clause 4.
- To correct a reference to committee. *Manual* § 854.
- To call up for consideration a nonprivileged resolution. Deschler Ch 23 § 47.4.
- To consider a bill under the general rules of the House. 87–1, July 31, 1961, p 14050; 91–1, Mar. 27, 1969, p 7895.
- To call up as privileged a bill not otherwise in order. 92–1, Sept. 29, 1971, p 33826; 95–1, Feb. 17, 1977, pp 4579–81.
- To present a bill in advance of the receipt of the report thereon, or to permit additional time to file the report. 8 Cannon § 2783.
- To agree to a special order for the consideration of certain business. 4 Hinds §§ 3165, 3166; 7 Cannon §§ 758–760.
- To alter the terms of a special order. 7 Cannon § 763.
- To transact other business on a day set apart for a special purpose. 5 Hinds § 7246.
- To agree to transact no business during a stated period. 7 Cannon §§ 760, 761.
- To offer a perfecting amendment to an amendment which has already been agreed to. Deschler Ch 23 § 47.3.
- To take from the Speaker’s table a House bill with Senate amendments and to consider those amendments in the House. 99–2, June 19, 1986, p 16438. See also § 2, *supra*.
- To permit the House to recede from its own amendment to a Senate amendment prior to the stage of disagreement. 87–1, Sept. 7, 1961, p 18595; 89–2, Apr. 18, 1966, p 8207.
- To dispense with the first reading of a bill in Committee of the Whole. 8 Cannon § 2436.
- To dispense with the reading of an amendment in the Committee of the Whole. Deschler Ch 23 § 47.2.
- To withdraw a pending amendment in Committee of the Whole. Rule XXIII clause 5(a). *Manual* § 870.
- To return to a portion of a bill passed in the reading for amendment. 8 Cannon § 2929.
- To insert extraneous material in the *Congressional Record* (5 Hinds § 6990; Deschler Ch 23 § 47.11) or to permit Members to revise and extend their remarks or to vacate such permission (98–1, Nov. 15, 1983, p 32746).
- To postpone consideration of a measure (96–1, Mar. 26, 1979, p 6239), such as a resolution from the Committee on Rules (Deschler Ch 23 § 47.8) or to postpone certain votes thereon (95–2, Oct. 10, 1978, p 34918).
- To entertain a proposition for a recess. 8 Cannon § 3357. (A House rule permits a recess for a “short time” by declaration of the Speaker. See Rule I clause 12.)

## § 8

### HOUSE PRACTICE

- To suspend the order of business to permit the House to vacate an action taken on a bill. 6 Cannon § 711.
- To withdraw papers accompanying bills after they have been submitted to the House. 5 Hinds § 7259.
- To file a report or to file minority views while the House is not in session. 8 Cannon § 2252.
- To withdraw a report from a standing committee. 8 Cannon § 2312.

## § 8. — Application to Debate

The unanimous-consent procedure is frequently used in the House and in the Committee of the Whole to vary the rules governing debate. The procedure may be invoked:

- In the Committee of the Whole to permit minor variances from an adopted special rule in ways congruent with that rule of the House, but not to permit substantive alterations of special orders. Unanimous-consent requests for such alterations must be made in the House. *Manual* § 877a.
- To divide the time allotted for general debate between two or more Members. 5 Hinds § 5003; 8 Cannon § 2549.
- To increase the 40 minutes of debate allowed on a motion to suspend the rules. 8 Cannon § 3414.
- To close debate on titles of a bill that have not been read. Deschler Ch 23 § 47.1.
- To extend the time which has been fixed for five-minute debate in the Committee of the Whole. 86–2, June 23, 1960, p 24055; 90–1, Nov. 15, 1967, p 32691; 95–1, Oct. 20, 1977, p 34714.
- To close or limit debate under the five-minute rule in the Committee of the Whole. 87–1, May 10, 1961, p 7725; 88–2, Feb. 8, 1964, p 2614.
- To use exhibits in the Committee of the Whole during debate on a bill. 88–1, Aug. 1, 1963, p 13853.
- To change unparliamentary words spoken in debate (Deschler Ch 23 § 47.9) or to withdraw or delete such words from the Record (8 Cannon §§ 2538, 2540; Deschler Ch 23 § 47.10).
- To address the House for one minute before offering a motion. Deschler Ch 23 § 47.7.

## § 9. Limitations on Requests; Grounds for Denial

### Generally

It cannot be assumed that the House has authority to waive any rule by unanimous consent. Sometimes the rule itself contains a specific provi-

sion that it cannot be suspended by unanimous consent. The rules specifically prohibit the use of the unanimous-consent procedure:

- To permit unauthorized persons to be admitted to the House floor. Rule XXXII clause 1.
- To bring to the attention of the House an occupant of the galleries. Rule XIV clause 8.
- To delete the name of the first sponsor of a bill or resolution. Rule XXII clause 4(b)(2).

In addition, there are many rules that are not subject to waiver under the practice of the House, even by unanimous consent. 91–2, July 29, 1970, p 24619. This is particularly true in the Committee of the Whole where debate and the amendment process are often restricted by the terms of a special order. In the Committee it is in order to permit by consent minor variances from an adopted special rule in ways congruent with that rule of the House, but not to permit substantive alterations of special orders. Unanimous-consent requests for substantive alterations must be made in the House. *Manual* § 877a.

It is not in order to seek unanimous consent:

- To permit the Committee of the Whole to alter an order of the House (8 Cannon § 2323), or to entertain a proposition which is in order only in the House (Deschler Ch 23 §§ 39.12, 48.15, 48.16). See also *Manual* § 877a.
- To excuse a Member from voting in the Committee of the Whole. 89–1, Mar. 26, 1965, p 2096.
- To permit a Member to have his vote recorded after the announcement of the result. 86–1, Mar. 12, 1959, p 4039; 92–1, Mar. 17, 1971, p 6809.
- To revise and extend arguments in the *Congressional Record* on points of order (it being essential that the Chair’s ruling be responsive to arguments actually made). 98–1, Nov. 2, 1983, p 30545.
- To insert in the Record a colloquy between Members that did not actually occur. *Manual* § 929.

### **Requests Denied at the Speaker’s Discretion**

The Speaker may decline to recognize for a unanimous-consent request which is improper or inappropriate under the particular circumstances, as where proper notice cannot be given to interested Members. Deschler Ch 23 §§ 48.2 *et seq.* He may do so pursuant to his discretionary power to rec-

ognize Members. Deschler Ch 23 §42. Thus the Speaker may decline to recognize for a unanimous-consent request:

- To permit a Member to address the House on a private bill being considered on the Private Calendar. Deschler Ch 23 §48.8.
- To permit the House to rerefer a bill to a committee whose chairman has not been consulted on the matter. Deschler Ch 23 §48.5.
- To consider a measure after the Members have been informed that there will be no further legislative business for the day. Deschler Ch 23 §§48.6, 48.7.
- To direct the clerk of a committee, without its approval, to bring to the well of the House certain documents in the custody of that committee. Deschler Ch 23 §48.4.
- For a second “one-minute” speech on the same day.

#### **§ 10. Reconsideration; Modification or Revocation of Agreement**

An agreement entered into by unanimous consent may be modified or vacated by unanimous consent at the pleasure of the House. 7 Cannon §946. Thus, by unanimous consent, the House may vacate a previous unanimous-consent agreement permitting all Members to revise and extend their remarks on a particular measure. 98–1, Nov. 15, 1983, p 32746. A unanimous-consent agreement may also be revoked pursuant to a majority vote on a resolution reported from the Committee on Rules as to the order of business. 8 Cannon §3390.

The motion to reconsider is applicable to a determination made pursuant to a unanimous-consent agreement. 8 Cannon §2794.

It has been held that a so-called “gentleman’s agreement”—that is, a unanimous-consent agreement *not* to take up a bill during a particular period—is not subject to subsequent revision, even by unanimous consent. Such agreements are said to be observed “with scrupulous care,” especially when Members have left the floor with the understanding that the bill will not be considered in their absence. 6 Cannon §710a.